



# ROBOCALLS TO RESIDENTIAL AND WIRELESS PHONES

*by* Texas Attorney General Greg Abbott

TO HELP TRADITIONAL LANDLINE AND wireless telephone customers avoid prerecorded commercial telemarketing calls, the Federal Communications Commission (FCC) recently approved changes to its telemarketing rules. Unwanted autodialed calls, which are often referred to as robocalls, intrude upon recipients' personal time and – in the case of calls to wireless phones – waste their minutes.

Under the FCC's new rules, solicitors must get the consumer's written authorization in advance before robocalling that consumer. The written consent may be obtained through electronic means such as a website form.

The FCC's rule change also eliminates the "established business relationship" exemption. Under the old policy, the FCC allowed solicitors to robocall individuals with whom the soliciting company had previously conducted business. The new FCC rule requires written consent for all telemarketing robocalls – regardless of whether the company previously did business with the consumer.

The FCC's rule change also requires solicitors to give consenting call recipients an opportunity to change their mind and withdraw their written consent. Under the new rules, every robocall must include an automated,

interactive opt-out mechanism that enables a recipient to revoke consent and instruct the solicitor to stop calling by pressing just a few keys during the call. The solicitor must automatically add the consumer to its do-not-call list and immediately disconnect the call.

The new rules also strictly limit the number of abandoned or "dead-air" calls that solicitors make within their robocalling campaigns. "Dead-air" calls refer to calls in which a recipient hears only a dial tone or dead air because a telemarketer has abandoned the call.

The FCC did not change the federal rules governing telephone calls that deliver purely informational recorded messages. In other words, calls that merely inform consumers are treated differently than calls that attempt to sell a product or service. For example, informational robocalls include automated messages updating consumers about airline flights or school closures.

Other types of authorized robocalls include calls from financial institutions, political candidates, telephone carriers and most charitable organizations. Similarly, the new rules do not apply to messages about recipients' health care. The FCC's new rules also exempt debt collection calls as long as the caller is not trying to sell something.

Texans who receive unwanted prerecorded telemarketing calls should file a complaint with the FCC at [www.fcc.gov/complaints](http://www.fcc.gov/complaints) or by calling (888) 225-5322. Recipients may also file a complaint with the Office of the Attorney General online at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or by calling (800) 252-8011.

The FCC's new rules come as the Texas Attorney General's Office resolves enforcement actions against three telemarketing firms that participated in an unlawful scheme to sell car warranty service contracts. According to state investigators, the defendants' unlawful telephone solicitation scheme violated multiple state and federal telemarketing laws. In addition to falsely marketing service contracts as extended warranties, the telemarketing companies used falsified telephone numbers to hide their identities. As a result, recipients' caller identification devices displayed fake numbers when they received calls from the defendants. Under settlement agreements with the defendants, the companies must provide clear disclosures to customers and abide by state and federal telemarketing laws in the future.

– April 2012

## POINTS TO REMEMBER



## UNWANTED ROBOCALLS

The Federal Communications Commission's new rules protect Texans from unwanted robocalls by:

- Requiring solicitors to obtain prior express written consent from recipients before placing a robocall
- Eliminating the "established business relationship" exemption
- Requiring solicitors to provide an automated, interactive "opt-out" mechanism during each robocall so that consumers can electronically instruct the solicitor to stop calling
- Strictly limiting the number of abandoned or "dead air" calls that telemarketers can make within each calling campaign. Texans who receive prerecorded telemarketing calls but have not agreed to get them should file a complaint:

Federal Communications Commission  
[www.fcc.gov/complaints](http://www.fcc.gov/complaints)  
(888) 225-5322

Office of the Attorney General  
[www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)  
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